



## Early Journal Content on JSTOR, Free to Anyone in the World

This article is one of nearly 500,000 scholarly works digitized and made freely available to everyone in the world by JSTOR.

Known as the Early Journal Content, this set of works include research articles, news, letters, and other writings published in more than 200 of the oldest leading academic journals. The works date from the mid-seventeenth to the early twentieth centuries.

We encourage people to read and share the Early Journal Content openly and to tell others that this resource exists. People may post this content online or redistribute in any way for non-commercial purposes.

Read more about Early Journal Content at <http://about.jstor.org/participate-jstor/individuals/early-journal-content>.

JSTOR is a digital library of academic journals, books, and primary source objects. JSTOR helps people discover, use, and build upon a wide range of content through a powerful research and teaching platform, and preserves this content for future generations. JSTOR is part of ITHAKA, a not-for-profit organization that also includes Ithaka S+R and Portico. For more information about JSTOR, please contact [support@jstor.org](mailto:support@jstor.org).

the ground of race in selecting the grand or petit jury, as the case may be.<sup>3</sup> But there is no conclusive presumption that the officers have exercised an honest judgment; if the fact is clearly shown to be otherwise, and the accused nevertheless compelled to stand trial, the amendment is violated.<sup>4</sup>

In a decision just announced by the Supreme Court of the United States, this principle is reaffirmed. *Rogers v. Alabama*, 24 Sup. Ct. Rep. 257. The accused objected that the commissioners appointed to select the grand jury excluded all negroes solely on the ground of color. This objection was overruled by the state court, as not made in proper form. The United States Supreme Court, however, held that the point was properly raised and the objection good in substance. As the state court had previously declared that the statute under which the jurors were selected warranted no such discrimination,<sup>5</sup> it might be argued that the act complained of was not the act of the state. If the commissioners, in making the alleged discrimination, acted in violation of their duty, their act could hardly be called the act of the state. And it is plain that the amendment applies only to the acts of the states,<sup>6</sup> and that the Supreme Court cannot review the action of a state court, if it has failed to give relief from the wrongful act of an individual because of a mistaken opinion on a point of procedure.<sup>7</sup> But the accused was deprived of his constitutional rights not only by the act of the commissioners, but also by the act of the court in pronouncing judgment after a trial under the improper indictment.<sup>8</sup> This was clearly the act of the state and within the purview of the amendment. A federal question being thus raised, it is settled that the Supreme Court may go into the merits of the case, although the state court may have held that the constitutional point could not be considered because not properly pleaded.<sup>8</sup>

---

CONFLICTING EQUITABLE CLAIMS TO THE SAME RES.—When a person is subject to two equally meritorious equitable claims for the same property owned or subsequently acquired by him, the claim prior in point of time is preferred.<sup>1</sup> Since both are equally meritorious with the sole difference that the prior, when it arose, immediately attached to the property as an equity, or, if the property was not yet acquired, gave an inchoate right to control the property when it should be acquired, a subsequent claim without greater merit should not displace the already existing equitable right. A recent New Jersey case, where the subsequent claim arose out of the very acquisition of the property by the obligor, opens the discussion of a more troublesome question. One Wood, under a duty to a corporation to pay the price of land out of his own substance, bought the land under an option which he held in trust for that corporation, and paid for it, in breach of trust, with part of a fund he held in trust for a third person. It was held that the third party, as against the corporation, had no rights in the land. *Seacoast R. Co. v. Wood*, 56 Atl. Rep. 337.

---

<sup>3</sup> *Williams v. Mississippi*, 170 U. S. 213.

<sup>4</sup> *Neal v. Delaware*, *supra*.

<sup>5</sup> See *Green v. State*, 73 Ala. 26.

<sup>6</sup> *Civil Rights Cases*, 109 U. S. 3.

<sup>7</sup> *Cf. Caldwell v. Texas*, 137 U. S. 692.

<sup>8</sup> *Carter v. Texas*, 177 U. S. 442.

<sup>1</sup> *Cory v. Eyre*, 1 De G., J. & S. 149.

The cases on the point that have arisen are principally cases in which a person under a prior equity to convey property which he did not own, either received a conveyance from the owner to hold on an express trust<sup>2</sup> or induced a conveyance from the owner by fraud.<sup>3</sup> In either case it is held that the grantor should be preferred. A conclusive answer to the prior equitable claimant is that the grantor, although he is the subsequent obligee, has in fact the prior interest in the very property, which here also should not be displaced by a claim which has no greater merit. Before the accrual of the first obligation, the subsequent obligee had not only the beneficial, but also the legal interest in the property. The only diminution of that interest has been a conveyance, but a conveyance in its inception merely of the bare legal title with a retention of the beneficial interest, in the one case, by the express agreement, in the other, on account of the fraud. If the obligor were claiming for his own benefit, the conflicting right of his grantor would be absolute.<sup>4</sup> It follows that the equitable claim of the prior obligee can be no greater, since his only equitable right is to the property of his obligor, and by the analysis the obligor has only a title subject to an existing equity.

It is submitted that these cases apply with effective force in the solution of the principal case. When Wood wrongfully used the trust fund to discharge his obligation to pay the purchase price to the vendor, it was as if he had requested a stranger to discharge that obligation. On familiar principles, the stranger would be subrogated to the right of Wood's vendor to hold the land as security for the payment of the purchase price.<sup>5</sup> If the *cestui que trust* at Wood's request had authorized the use of the trust fund for the same purpose, there can be no doubt that the court of equity would allow him the same right of subrogation, as having substantially discharged Wood's obligation at the latter's request.<sup>6</sup> Since, by the misappropriation of the trust fund for the same purpose, Wood compelled the discharge of the obligation by the *cestui que trust*, by a parity of reasoning the same result must follow. The land came, therefore, into the hands of Wood charged with the equity of subrogation in favor of the injured *cestui que trust*, and on the principle of the previous cases the claim of the corporation should have been postponed. The New Jersey decision, in reaching the contrary conclusion, is therefore deemed erroneous.

---

<sup>2</sup> *Kelley v. Jenness*, 50 Me. 455.

<sup>3</sup> *Eyre v. Burmester*, 10 H. L. Cas. 90.

<sup>4</sup> *Tyler v. Black*, 13 How. (U. S.) 230.

<sup>5</sup> *Faulk v. Calloway*, 123 Ala. 325.

<sup>6</sup> See *Bigelow v. Scott*, 135 Ala. 236.